



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 1 1 2014

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances: Addendum

FROM: Cynthia Giles

A handwritten signature in blue ink, appearing to read "Cynthia Giles", is written over the printed name.

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

The 1984 *Policy Against "No Action" Assurances* and the 1995 memorandum on *Processing Requests for Use of Enforcement Discretion* (attached) firmly and forcefully articulate the Agency's long-standing policy against providing a definitive assurance that the government will not proceed with an enforcement response for a violation of an environmental requirement outside the context of an enforcement action (a "no action assurance").¹ The dangers of such assurances and the rationale that underlie this bedrock policy are well stated in those documents, and they apply with as much force today as when they were first drafted.

Those memoranda also allow for a narrowly-circumscribed and limited exception to this prohibition in "extremely unusual cases" where a no action assurance is "clearly necessary to serve the public interest" and there is "no other mechanism" available to adequately address the situation. The 1984 *Policy* cited two examples to illustrate such "extremely unusual" circumstances: (1) to "allow action to avoid extreme risks to public health or safety" and (2) to "obtain important information for research purposes." This memorandum addresses the latter example, and formally terminates the use of a no action assurance for such purposes.

The use of a no action assurance to gather information for research has long been disfavored and has rarely been used, as there is a wide range of other readily-available mechanisms for legally gathering such information. This experience indicates both that a no action assurance for research is not generally necessary nor does it serve a critical role in support of the Agency's research function. In addition, following an internal analysis and discussion with the Office of Research and Development and the Office of the Inspector General, we have concluded that a no action assurance is an ill-suited mechanism under which to conduct research

¹ Within the context of an enforcement action, of course, a commitment not to enforce for a particular violation(s) can only be made if included in the "Effect of Resolution," "Covenant Not to Sue," or equivalent section of an administrative or civil judicial settlement document.

studies because, *inter alia*, it tends to inappropriately place the enforcement office in the role of overseeing research conducted by another part of the Agency to which the research role, function and expertise is committed.

Accordingly, the reference in the 1984 *Policy* to the use of a no action assurance to obtain information for research purposes is rescinded. No other part of either the 1984 or the 1995 memoranda is modified or otherwise affected by this memorandum.

Attachments

cc: OECA Office Directors
Regional Counsels
Regional Enforcement Directors